



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2004

Ms. Dorcas A. Green
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 2156
Austin, Texas 78768

OR2004-3710

Dear Ms. Green:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 200985.

The Austin Independent School District (the "district"), which you represent, received a request for a copy of the tape recording of a specified appeal hearing and a copy of a document relating to "TEA's legal interpretation of the new expulsion law." You state that you have released the requested document to the requestor. However, you claim that the requested tape recording is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Gov't Code § 552.101. Section 551.104 of the Government Code makes the certified agenda or tape recording of a lawfully closed meeting confidential. A certified agenda or tape recording of a closed meeting is available for public inspection and copying only under a court order issued under section 551.104. *See* Gov't Code § 551.104(c); Open Records Decision No. 495 at 4 (1988). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. Thus, a certified agenda or tape recording of a properly closed executive session of the district's board of trustees is confidential under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code, a provision of the Open Meetings Act. *See* Open Records Decision No. 495 (1988). You

inform us that the tape recording at issue was made in a closed meeting of the district's board of trustees on February 3, 2004. Based on your representation, we conclude that the district must withhold that recording under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

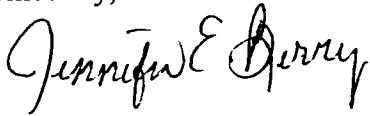
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer E. Berry".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 200985

Enc: Submitted documents

c: Ms. Barbara L. Christenson
7605 Callbram Lane
Austin, Texas 78736-3123
(w/o enclosures)